

Attorney Docket No. CH-03-01

Page 7 of 14

REMARKS

Reconsideration and further examination is respectfully requested. The specification has been amended to conform to normal use of the word "the" rather than "said." Independent claims 1 and 14 have been canceled, and new claims 16 and 17 have been added. Claims 2, 5, 6, and 8-13 have been amended to depend from new claim 16. Claim 15 has been amended to depend from new claim 17. Although Applicant believes that claims 1 and 14 are patentable, they have been replaced with claims 16 and 17, respectively, to emphasize that the back end of the hygiene article is formed for comfortable retention between the user's buttocks and not for reasons of patentability. No new matter has been added by these amendments.

Claims 1-5, 8, 9, 11, and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sturino (U.S. Patent No. 5,713,886 A). The Examiner stated:

Regarding claim 1, Sturino teaches a feminine hygiene article (10) for absorption of bodily fluids, comprising:

an elongated absorbent article (10) having a front end (20), a back end (18), a length (L1, L2) between said front and back ends (20, 18) sufficient to extend from a point between the user's buttocks while said front end (20) extends forward beyond the user's urogenital area, and does not include an intravaginal portion (column 2, lines 25-41).

Sturino discloses a panty liner *especially for use with G-string and thong type undergarments*. The Sturino device includes flaps extending laterally from an outer casing that can be partially folded around the narrowed crotch portion of an undergarment (column 3, lines 11-19. The Sturino device also includes adhesive layers for attaching the panty liner to an undergarment (column 3, lines 20-24).

In contrast to Sturino, new independent claims 16 and 17 of the present application recite that the back end of the absorbent article is *formed for retention between a user's buttocks*.

Attorney Docket No. CH-03-01

Page 8 of 14

It is well established that anticipation under 35 U.S.C. § 102 requires that each element of the claimed invention must be identically disclosed in a prior art reference. Sturino does not disclose elements of the present invention that are recited in claims 16 and 17, i.e., that the article is *formed for retention between a user's buttocks* rather than attachment to an undergarment. Dependent claims 2-5, 8, 9, and 11 have been amended to depend from new claim 16. Therefore, pending claims 2-5, 8, 9, 11, 16, and 17 are also not anticipated by Sturino.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sturino.

The Examiner stated:

Sturino does not expressly disclose an absorbent article having a height between 0.5 and 1.5 inches.

Mere changes in size alone are not sufficient to patentably distinguish a claimed invention from what is known in the art. In *Gardner v. TEC Systems, Inc.* (citation omitted), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Sturino discloses a thickness in the range of *about 1/16 inch to about 1/4 inch* for the absorbent core (column 2, lines 39-41) or *an overall thickness of about 1/8 inch* (column 4, lines 4-5). Further, Sturino teaches that the sanitary pad, napkin, or liner should be unobtrusive when worn with tight-fitting outer garments (column 1, lines 31-34; column 4, lines 10-11). The *"thickness"* discussed in Sturino is the thickness of the *absorbent layers*.

In contrast, claim 10 of the present invention recites a *height between about 0.5 inches and about 1.5 inches*, suitable for comfortable retention between the user's buttocks. The word "height" does not refer to the thickness for absorption, but, rather, to the dimension of the rear end that facilitates retention between the buttocks, which occurs partially via friction with the

Attorney Docket No. CH-03-01

Page 9 of 14

skin of the buttocks.

In addition, the thickness range recited in claim 10 is substantially thicker than the thickness disclosed by Sturino. If the Sturino pad had a thicknesses in the range recited in claim 10 would it would perform differently from the pad disclosed in Sturino. A thickness in the range recited in claim 10 would defeat the function of Sturino's article, as a thicker pad would not be unobtrusive when worn with tight-fitting outer garments. Further, such a thickness, particularly for the rear portion of the Sturino device, would make attachment to a thong or G-string via flap 30 unwieldy.

Therefore, a hygiene article having a height as claimed in claim 10 would perform differently from the device of Sturino and would defeat the function of the Sturino Device. Thus, claim 10 is not obvious with respect to Sturino.

Claims 1, 6, and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over White (U.S. Patent No. 6,890,326 B2) and Pierce *et al.* (U.S. Patent No. 4,340,058).

The White application was filed on September 12, 2002, and published on March 18, 2004. The White publication date is more than five months after the filing date of the present invention, September 30, 2003. Further, Applicant's invention was completed prior to the filing date of White. An affidavit under 37 C.F.R. § 1.131, signed by the Applicant is enclosed. This affidavit states that Applicant conceived, made, and tested her invention prior to June 19, 2002, well before the filing date of White, and Applicant disclosed her invention in confidence to her attorney in August, 2003, within one year of the White filing date. Therefore, White is not prior art with respect to the present application, and all rejections under 35 U.S.C. § 103 citing White are improper and should be withdrawn.

Attorney Docket No. CH-03-01

Page 10 of 14

Pierce *et al.* Describes a sanitary napkin formed from a plurality of elongate pads, each of approximately circular cross-section. The pads are moveable relative to each other, and *the ends will tend to flatten out in use (column 3, lines 43-61; Fig. 6)*. Also, the napkin of Pierce *et al.* is held in place with a belt or adhesive strips attached to the user's undergarment. Pierce *et al.* is devoid of any teaching, motivation, or suggestion to retain the napkin between the user's buttocks.

In contrast, the hygiene article of claims 16, 6, and 7 has a *back end formed for retention between a user's buttocks* and a *width sufficiently small to fit between the user's buttocks* without causing significant discomfort.

Therefore, the hygiene article of claims 16, 6, and 7 is not obvious with respect to Pierce *et al.*

Claims 12 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sturino as applied to claims 1-5, 8, 9, 11, and 14, and further in view of Champaigne, Jr. (U.S. Patent No. 3,665,923). The Examiner stated,

Champaigne Jr. teaches a flushable and biodegradable sanitary napkin (abstract).

At the time of the invention, it would have been obvious to one skilled in the art to make the panty liner of Sturino flushable as taught by Champaigne, Jr. in order to facilitate disposal of the device.

Champaigne, Jr. describes a flushable sanitary pad (abstract; col. 1 line 75 to col. 2, line 6). The sanitary pad is a *relatively thick sanitary napkin* having a pressure sensitive adhesive area for *attachment to a suitable undergarment*. The pad is quite bulky, and Champaigne, Jr. is devoid of any teaching, motivation, or suggestion to use the in any manner other than with pressure sensitive adhesive attaching it to the user's undergarment.

Attorney Docket No. CH-03-01

Page 11 of 14

As discussed above, the Sturino device is thin and unobtrusive when worn with a tight-fitting undergarment, and it is *shaped to be worn with an undergarment* such as a G-string or thong. There is no teaching, motivation, or suggestion to make flushable or biodegradable a hygiene article that has a *back end formed for retention between the user's buttocks*, as claimed in independent claims 16 and 17 of the present application. Claim 12 includes the limitations of claim 16, and claim 15 includes the limitations of claim 17. Therefore, the rejection of claims 12 and 15 under 35 U.S.C. § 103 is improper and should be withdrawn.

Applicants have made a diligent effort to place claims 2-13 and 15-17 in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Marian J. Furst, Applicants' Attorney at 801-967-5433 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

Oct. 12, 2005
Date

Marian J. Furst
Marian J. Furst
Attorney for Applicant
Reg. No. 39984

Marian J. Furst, Attorney at Law
4856 W. 6200 S.
315
Kearns, UT 84118
Telephone: 801-967-5433
Email: mfurst@furstpatent.com

Attorney Docket No. CH-03-01

Page 12 of 14

List of Pending Claims

1. (Canceled)
2. (Amended) The feminine hygiene article of claim 16, comprising a soft material that is substantially non-irritating to human skin and membranes in the genital area.
3. (Original) The article of claim 2, wherein said material is selected from bonded fabrics, woven fabrics, cellulose, paper, and combinations thereof.
4. (Original) The article of claim 2 wherein said article comprises a plurality of layers of said material.
5. (Amended) The article of claim 16, wherein said article comprises at least one folded layer.
6. (Amended) The article of claim 16, wherein said article comprises at least one layer and is rolled into an elongated coil.
7. (Original) The article of claim 6, wherein said coil is twisted or creased at a position between said front and back ends.

Attorney Docket No. CH-03-01

Page 13 of 14

8. (Amended) The article of claim 16, wherein said article has a length between about 6 inches and about 10 inches.
9. (Amended) The article of claim 16, wherein said article has a width less than about 1.5 inches.
10. (Amended) The article of claim 16, wherein said article has a height between about 0.5 inches and about 1.5 inches.
11. (Amended) The article of claim 16, wherein said article is flexible and can conform to the shape of the body area where it is used.
12. (Amended) The article of claim 16, comprising a material that can be flushed into a sewer system.
13. (Amended) The article of claim 16, comprising a material that is biodegradable.
14. (Canceled)
15. (Amended) The kit of claim 17, wherein said absorbent article is selected from panty liners, mini-pads, maxi-pads, and sanitary napkins.

16. (New) A feminine hygiene article for absorption of bodily fluids, comprising:
an elongated absorbent article having a front end, a back end, a length between said front and back ends sufficient to extend from a point between the user's buttocks to a point beyond the user's urogenital area;

wherein said back end is formed for retention between a user's buttocks while said front end extends forward between the user's legs and beyond the user's urogenital area, said back end has a height less than about 2 inches and a width sufficiently small to fit between the user's buttocks and legs without causing significant discomfort, and said front end does not include an intravaginal portion.

17. (New) A feminine hygiene kit, comprising:
an elongated absorbent article having a front end, a back end, a length between said front and back ends sufficient to extend from a point between the user's buttocks to a point beyond the user's urogenital area, wherein said back end is formed for retention between a user's buttocks while said front end extends forward between the user's legs and beyond the user's urogenital area, said back end has a height less than about 2 inches and a width sufficiently small to fit between the user's buttocks and legs without causing significant discomfort, and said front end does not include an intravaginal portion; and

an absorbent pad held in placed between the user's panties and her urogenital area.